

## **INITIAL STATEMENT OF REASONS**

### **SECTIONS 440-450; Sections 3001, 3015, 3020, 3032, 3041, 3044, 3052, 3080, 3082, 3082.1, 3082.5, and 3086.5**

#### **SPECIFIC PURPOSE OF THE REGULATIONS**

Each State must have on file with the Secretary, U.S. Department of Education, policies and procedures (including relevant statutes, regulations, or other documents) that demonstrate that the State meets all of the eligibility requirements of the federal Individuals with Disabilities Education Act (IDEA) listed in Section 1412(a) of Title 20 of the United States Code.

In response to California's June 2002 eligibility documents, the U.S. Department of Education on July 2, 2002, granted a conditional approval of FY2002 funds and indicated areas of the federal regulations that existing California law, regulations, or policy still do not address or establish enforceable requirements.

As part of California's eligibility documents and grant application for funds under Part B of the Individuals with Disabilities Education Act (IDEA) (20 USC 1400 et seq.), the State of California is required to make revisions to the regulations in Subchapter 2 of Chapter 2 and Subchapter 1 of Chapter 3 of Division 1 of Title 5 of the California Code of Regulations.

#### **NECESSITY**

The proposed changes specifically address the 1997 IDEA amendments and 1999 IDEA regulations in Part 300 of the Code of Federal Regulations (CFR).

**Article 3.5 (Sections 440-450)** has been added to address the confidentiality of information about individuals with exceptional needs in 34 CFR 300.560 – 300.577.

**Section 440** has been added to provide, as part of the notice of parent rights, that the confidentiality of personally identifiable information about individuals with exceptional needs shall be provided in accordance with 34 CFR 300.127 and 300.561.

**Section 441** has been added to specify that parents have the right to inspect and review any education records relating to their children, including test protocols containing personally identifiable information about the child, in accordance with 34 CFR 300.562 and 34 CFR Part 99. The section also addresses the need for each participating agency to keep a record of parties obtaining access to education records collected, maintained, or used in accordance with 34 CFR 300.563.

**Section 442** has been added to clarify record inspection procedures, in accordance with 34 CFR 300.564, where the education record may include information on more than one child.

**Section 443** has been added to specify that each participating agency must provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency in accordance with 34 CFR 300.565.

**Section 444** has been added to spell out the process, in accordance with 34 CFR 300.567, to be followed when a parent requests that an education record be amended.

**Section 445** has been added to clarify, in accordance with 34 CFR 300.571, when parental consent is required before personally identifiable information is disclosed to anyone other than officials of participating agencies collecting or using the information.

**Section 446** has been added to spell out the process, in accordance with 34 CFR 300.572, each participating agency must follow to protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

**Section 447** has been added to specify that a public agency must inform parents, in accordance with 34 CFR 300.573, when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to the child.

**Section 448** has been added to specify that the California Department of Education will provide information to the public regarding the extent to which children are afforded, in accordance with 34 CFR 300.574, rights of privacy similar to those afforded parents regarding education records.

**Section 449** has been added to specify that the California Department of Education, in accordance with 34 CFR 300.575, will provide information to the public regarding policies and procedures, including sanctions, that the State uses to ensure that its policies and procedures are followed, and the requirements of the IDEA and regulations are met.

**Section 450** has been added to clarify that disciplinary action information about an individual with exceptional needs is included in, and transmitted with, the student records only to the same extent that the such information is included in, and transmitted with, the student records of nondisabled children pursuant to 34 CFR 300.576. The section also specifies what a statement would include, and that when an individual with exceptional needs transfers from one school to another, the transmission of any of the individual's records must include both the student's individualized education program and any statement of current or previous disciplinary action that has been taken against the child if such information on discipline is also transmitted about nondisabled students.

**Section 3001** has been amended to clarify that the definition of an "individual with exceptional needs" under Section 56026 of the Education Code also includes other terms for the individual (e.g. child or children with a disability, pupil, student, etc.) The term "personally identifiable" is defined, in accordance with 34 CFR 300.500(b)(3), as the term is used in reference to the confidentiality of information about individuals with exceptional needs.

**Section 3015** has been added to clarify that single district special education local plan areas (SELPA), like multidistrict and multicounty SELPAs in Section 56195.7(c)(6) of the Education Code, must have a written procedure available for inspection at the SELPA for the provision for ongoing review of programs conducted, and procedures utilized, under the local plan, and a mechanism for correcting any identified problem. This is necessary for the California Department of Education to comply with program monitoring responsibilities pursuant to 20 USC 1412(a)(11) and 34 CFR 300.556.

**Section 3020** has been added to clarify that child find and identification requirements, in accordance with 34 CFR 300.125, also apply to highly mobile individuals with exceptional needs, such as migrant and homeless children, and children who are suspected of being an individual with exceptional needs and in need of special education, even though they are advancing from grade to grade.

**Section 3032** has been added to cross-reference the confidentiality of information about individuals with exceptional needs provisions in Article 3.5 (commencing with Section 440) of Subchapter 2 of Chapter 2 of Division 1 of Title 5, California Code of Regulations.

**Section 3041** has been added to address the individualized education program (IEP) accountability requirement, in accordance with 34 CFR 300.350, that each public agency must make a good faith effort to assist the child to achieve the goals and objectives or benchmarks listed in the IEP.

**Section 3044** has been added to clarify that each local educational agency must ensure, in accordance with 300 CFR 300.121(e), that a free appropriate public education is available to any individual with exceptional needs who needs special education and related services, even though the individual is advancing from grade to grade. Eligibility shall be made on an individual basis by and IEP team.

**Section 3052**, at subdivision (g), has been amended to clarify that the IEP team determines when modifications to a positive behavior intervention plan would require an IEP team meeting in accordance with 34 CFR 300.343. Subdivision (n) is added to clarify that a “functional analysis assessment” does not have the same meaning as a “functional behavioral assessment” used for discipline purposes under the federal law.

**Section 3080** has been amended to clarify that due process procedures in Chapter 5 (commencing with Section 56500) of the Education Code are inapplicable to complaints, in accordance with 34 CFR 300.457, that a local educational agency has failed to meet specified provisions pertaining to the provision of services to children with disabilities enrolled by their parents in private schools. The amendment further clarifies that due process procedures are limited to child find requirements and procedures for assessment for determining eligibility. Clarifies that complaints that the state or local educational agencies have filed to meet the requirements of Article 5.6 (commencing with Section 56170) of Chapter 2 of Part 30 of the Education Code may be filed under the uniform complaint procedures pursuant the Chapter 5.1 (commencing with Section 4600) of Division 1 of Title 5, California Code of Regulations.

**Section 3082** has been amended to clarify that if a due process hearing officer requests an independent educational assessment as part of a hearing, the cost of the assessment shall be at public expense in accordance with 34 CFR 300.502(d).

**Section 3082.1** has been added to specify that the notice for a due process hearing requested by a parent, guardian, or an attorney representing the child must remain confidential pursuant to 34 CFR 300.507(c). It also specifies the content of the model form developed by the Superintendent of Public Instruction to assist parents and guardians in filing a request for a due process hearing. The section also specifies that a parent’s or guardian’s right to a due process hearing may not be denied or delayed for failure to provide the notice required for requesting a due process hearing.

**Section 3082.5** has been added to clarify the qualifications for due process hearing officers, and lists types of individuals who may not conduct a due process hearing pursuant to 34 CFR 300.508.

**Section 3086.5** has been added to clarify the qualifications for mediators and the selection process for mediators. The amendment also lists types of individuals who may not conduct a mediation meeting pursuant to 34 CFR 300.506(b).

#### **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS**

The Board did not rely upon any other technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

#### **REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES**

No other alternatives were presented to or considered by the State Board.

#### **REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS**

The Board has not identified any alternatives that would lessen any adverse impact on small businesses.